IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

-

WRIT PETITION NO : 16515 of 2002

Between:

N.Shivappa s/o.Nagaraju
R/o.1-3-36/12 , Paripalli Street Siddipet , Medak Dist

..... PETITIONER

AND

1. The Prohibition & Excise Superintendent
   Medak Disttict at Sanga Reddy
2. The Sub-Divisional Prohibition & Excise Officer
   Siddipet , Medak Dist
3. The Commissioner of Prohibition & Excise Govt. of A.P
   Hyderabad.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents in not refunding the annual license fee of Rs.3,00,000/- collected without renewing the license for the excise year 2002-2003 by way of Rs.1,00,000/- in the form of cash challan and Rs.2,00,000/- by way of Bank Guarantee vide B/G.No.12/2002-03, Dated: 04/04/2002 of UCO Bank, Sangareddy Branch ,Medak District as illegal, arbitrary, void and against principles of natural justice and direct the respondents to refund the annual licence fee of Rs.3,00,000/- collected without renewing the license for the excise year 2002-2003.

Counsel for the Petitioner: MR. T. AMARNATH GOUD

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following:

ORDER:

In substance, the petitioner seeks refund of an amount of Rs.1,00,000/- paid by him towards licence fee for IL.24 for the excise year 2002-2003, paid in the form of a cash challan and Rs.2,00,000/- by way of the Bank Guarantee B/G.No.12/2002-03, dated 04.04.2002 of UCO Bank, Sangareddy Branch, Medak District furnished by the petitioner towards his application for the said licence fee.

2. The petitioner was a holder of a IL.24 licence No. 195/2001-2002, dated 21.05.2001 for the period from 21.05.2001 to 31.03.2002 for running a shop at Anathasagar Village, Chinnakodur Mandal, Medak District. He pursued his business in the year 2001-2002 under the name and style of M/s Nilima Wines. Towards licence fee for the subsequent year 2002-2003, he paid the first instalment of Rs.1,00,000/- by way of challan and in respect of second and third instalments furnished a bank guarantee dated 04.04.2002.

3. On 30.03.2002, the petitioner submitted a representation to the second respondent for permission for shifting of his IL.24 licenced premises from Anathasagar Village to Chinnakodur within the same Mandal. In the application the petitioner stated that if a shift is not permitted, he did not want renewal of the licence, and that the licence fee paid by him along with the application be refunded, as in such eventuality he would not be interested in carrying on the business for the excise year 2002-2003. The petitioner alleges that the second respondent recommended for shifting and renewal of the petitioner's licence and on 8.4.2002 the first respondent addressed the third respondent recommending consideration of the petitioner's request for shift of the shop from Anathasagar village to Chinnakoduru village together with renewal for the year 2002-2003. The petitioner claims to have paid rs.3,00,000/- as annual licence fee as per the rules of which an amount of Rs.1,00,000/- was paid by way of challan and Rs.2,00,000/- supported by a bank guarantee obtained from the UCO Bank, Sangareddy Branch. The respondents did not respond to the petitioner's request and did not accede to his request for shifting of the shop to Chonnakoduru village and renewal of his IL.24 licence at Chinnakoduru village. It follows logically that there was no application of

the petitioner seeking renewal of IL.24 licence for Anathsagar village. It also logically follows that the respondents were not competent to renew his IL.24 licence for Anathasagar village without a request from the petitioner for renewal of the licence.

4. After sufficient waiting, the petitioner made a representation in May, 2002 to the first respondent for return of the first instalment of licence fee as also of the bank guarantee furnished for the second and third instalments. Thereupon, the third respondent by the proceedings dated 09.08.2002 passed an order, impugned herein, rejecting the petitioner's request for refund of the licence fee and return of the bank guarantee by recording a reason that there was no rule to refund the licence fee, unless licence is refused by the department. In the circumstances, the Writ Petition is filed seeking the reliefs already adverted to.

5. The learned Government Pleader for Prohibition and Excise places reliance on the provisions of Rules 25(7), 26(A) and 35(i) of the A.P. Indian Liquor and Foreign Liquor Rules 1970 and contends that there is no provision enabling refund of the licence fee already paid by the petitioner.

6. Rule 25(7) of the rules reads:

> " *In case a licence is refused, the fee paid shall be refunded."*

Rule 26(A) ordains that:

> *"26(A) (1)(a) An application for the renewal of the licence shall bear a court fee stamp of (the requisite value as per the provisions of the Indian Stamp Act, 1899) and shall be submitted to the authority competent to renew the licence, one month in advance of its expiry together with a challan in original in support of having paid the required licence fee):*
>
> *(Provided that the Commissioner of Prohibition and excise may, subject to such terms and conditions as he may deem fit to impose permit the licencee to submit application on such date as may be specified for renewal of licence before the expiry of the period of the licence and also to pay the licence fee in such manner as he deems fit.*
>
> *Provided further the Commissioner of Prohibition and Excise for the special reasons to be recorded therein (subject to such terms and conditions as he deem fit to impose may consider to) entertain the application for renewal upto 30th April of every year with a rate of rs.100/- per each day of delay (and in accordance with the guidelines issued by the Government from time to time) after the expiry of the period of licence.)*

(b) (Before issue of a licence the licensee shall execute a counter part agreement inform IL-17, or IL-17-A or I-17-B or IL-28) (other than licences under IL.24)/IL.28-A (licences under IL.24) as the case may be on the stamp paper of requisite value as per the provisions of the Indian Stamp Act, 1899.)

(2) In case the application for renewal of licence is made as prescribed in sub-rule (i) and if the licence is not duly renewed and returned before the licence expired, the licensee shall have the right to carry on business till its renewal is refused and the fact intimated. If the application is not made within time it shall not, however be open to the licensee to continue the business on the expiry of the licence.

(3) (…)

Rule 35(1) enacts that:

" The licensee shall sell the liquor only at the premises specified in the licence."

Sub rule (2) of this rule enacts that:

" No change or alteration of the licensed premises shall be made nor the licensed premises shifted elsewhere without the prior approval of the Commissioner of Prohibition and excise."

7. It is a settled principle in the area relating to Trade and Commerce in intoxicating beverages, in the context of the A.P. Excise Act, 1968 and the plethora of subordinate legislation thereunder, that the privillege of manufacture, purchase and sale of alcoholic beverages is vested in the State, and that the State has been invested with requisite power to farm out a part of that privillege relating to sale in retail of alcoholic beverages to private individuals. An IL.24 permit, as is called,is an instance of one such limited privilege farmed out by the State by grant of licence to private persons to indulge in retail sales of Indian Liquor and Foreign Liquor. There is nothing in the plenitude of the State's privilege which however obligates any citizen to continue to do business in liquor nor is it obligatory for any citizen to do business in liquor at a place ordained by the State Government. While any individual is at liberty to specify or identify a place of his choice where he would pursue retail sales of liquor and is at liberty to apply for an IL.24 licence, at such a place, the State has right to refuse to grant a permit at a place chosen by the applicant. The State has also a right to limit applications for an IL.24 licence to identified places where alone it decides that retail sales of Indian Liquor and Foreign

Liquor should be conducted.

8. It is in the above legal architecture that the facts of this case require to be considered. The petitioner was an existing licensee at Anathasagar Village having an IL.24 permit for the year 2001-2002, ending by 31.03.2002. On 30.03.2002, he made an application for shifting of his premises from Anathasagar village to Chinnakoduru Village in the same mandal and for renewal of his IL.24 licence for the subsequent year 2002-2003, so as to enable him to conduct his business operations from Chinnakoduru village. Such a request may have been legitimate or otherwise. At any rate, the petitioner's application dated 30.03.2002 could not have been considered by any authority reasonably instructed in law or in the English language as an application for renewal of the IL.24 licence in Anathasagar village. It may either have been considered as a disinclination to continue IL.24 business in Anathasagar village or a request to grant renewal of licence at Chinnakoduru village. In the absence of any application by the petitioner seeking renewal of his IL.24 licence for the year 2002-2003 at Anathasagar village, no IL.24 licence could have been granted by the respondents forcing the petitioner to do business in Anathasagar village. No such privillege exists in the respondents under the provisions of the A.P. Excise Act, 1968 or any its numerous subordinate legislation. It may be that insofar as Chinnakoduru village is concerned, the petitioner is not entitled for grant of a licence as a transfer, but would have to make an application for fresh licence. Even so, there was no occasion for the respondents to withhold the amount of Rs.1,00,000/- paid by him in the context of his application dated 30.03.2002 or to refuse the return of the bank guarantee furnished by him.. The amount of Rs.1,00,000/- paid or the bank guarantee furnished for a Rs.2,00,000/- was not for a renewal of the IL.24 licence at Anathasagar village. In fact, no renewal of licence was granted to the petitioner either for Anthasagar village nor a fresh licence for Chinnakoduru village. In the facts and circumstances of the case, it must at least have occured to the respondents that it should have been construed as a case of refusal to grant a licence in terms of Rule 25(7) of the Rules. Even if it cannot be so construed, it was the case of the petitioner making an application for renewal of licence at Chinnakoduru village or an application for fresh licence at Chinnakoduru which was not permissible under the rules and therefore, it ought to have been construed as a deposit made and a bank guarantee furnished under a mistake of fact or of law. In any event it was illegal, incompetent and unethical for the respondents to have withheld the petitioner's money and to compound that arbitrary

conduct by a refusal to refund the same, even when called upon to do so by the petitioner, as is evident by the orders of the third respondent dated 09.08.2002.

9. On the analysis above, the writ petition is allowed. The order of the third respondent dated 09.08.2002 is declared to be patently incompetent and arbitrary. The respondents are declared to be under an obligation to refund the amount of Rs.1,00,000/- paid by the petitioner towards licence fee for IL.24 licence for the year 2002-2003 and an obligation to refund the bank guarantee furnished by the petitioner for the second and third instalments for the aforesaid period. Consequently, the respondents are directed to refund the amounts above to the petitioner within 72 hours from the date of receipt of a copy of this order, as these amounts have been illegally and without any reasonable cause whatsoever, withheld by the respondents since April 2002.

10. Having regard to the patently illegal conduct of the respondents and the recalcitrant attitude in reiterating their right to illegally withhold the amounts, this court considers it appropriate to allow the Writ Petition with costs quantified at Rs.1000/-, which amount shall also be paid to the petitioner by the respondents within a period of one month from the date of receipt of a copy of this order.

11. The Writ Petition is allowed as above, with costs.

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kvrm/kvsn 24-11-2004

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Twenty third day of November, two thousand and four.

To

1. The Prohibition & Excise Superintendent
   Medak Disttict at Sanga Reddy
2. The Sub-Divisional Prohibition & Excise Officer
   Siddipet , Medak District.
3. The Commissioner of Prohibition & Excise Govt. of A.P
   Hyderabad.

4. 2 CCs to GP for Prohibition and Excise, High Court Building,

Hyderabad (OUT).

5. 2 CD copies.